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18   **UNITED STATES DISTRICT COURT**

19   **NORTHERN DISTRICT OF CALIFORNIA**

20 RICHARD KADREY, et al.,   Case No. 3:23-cv-03417-VC

21   Individual and Representative Plaintiffs,   **DEFENDANT META PLATFORMS, INC.'S
                                                    FURTHER SUPPLEMENTAL AND AMENDED**
22   v.   **RESPONSES AND OBJECTIONS TO
                                                    PLAINTIFFS' SECOND SET OF**
23 META PLATFORMS, INC., a Delaware   **INTERROGATORIES**
    corporation;
24
                            Defendant.
25   Trial Date:
                                                   Date Action Filed: July 7, 2023
26

27

28

PROPOUNDING PARTY: PLAINTIFFS RICHARD KADREY, SARAH SILVERMAN, CHRISTOPHER GOLDEN, TA-NEHISI COATES, JUNOT DÍAZ, ANDREW SEAN GREER, DAVID HENRY HWANG, MATTHEW KLAM, LAURA LIPPMAN, RACHEL LOUISE SNYDER, JACQUELINE WOODSON, LYSA TERKEURST, AND CHRISTOPHER FARNSWORTH

RESPONDING PARTY: DEFENDANT META PLATFORMS, INC.

SET NUMBER: ONE SECOND

Pursuant to Federal Rule of Civil Procedure 33 and Local Rule 33, Defendant Meta Platforms, Inc. ("Meta") responds as follows to Plaintiffs Richard Kadrey, Sarah Silverman, Christopher Golden, Ta-Nehisi Coates, Junot Díaz, Andrew Sean Greer, David Henry Hwang, Matthew Klam, Laura Lippman, Rachel Louise Snyder, Jacqueline Woodson, Lysa TerKeurst, and Christopher Farnsworth's ("Plaintiffs") Second Set of Interrogatories ("Interrogatories").

I.   RESPONSES TO ALL INTERROGATORIES

1.   Meta's responses to these Interrogatories are made to the best of Meta's current employees' present knowledge, information, and belief. Said responses are at all times subject to such additional or different information that discovery or further investigation may disclose and, while based on the present state of Meta's recollection, is subject to such refreshing of recollection, and such additional knowledge of facts, as may result from Meta's further discovery or investigation. Meta reserves the right to make any use of, or to introduce at any hearing and at trial, information and/or documents responsive to these Interrogatories but discovered subsequent to the date of these responses, including, but not limited to, any such information or documents obtained in discovery herein.

2.   To the extent that Meta responds to an Interrogatory by stating that Meta will provide information or documents that Meta deems to embody material that is private, business confidential, proprietary, trade secret, or otherwise protected from disclosure pursuant to Federal Rule of Civil Procedure 26(c) and/or Federal Rule of Evidence 501, Meta will only do so subject to the parties' stipulated protective order governing the unauthorized use or disclosure of such information or documents with a designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL

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1

META'S FURTHER SUPP. & AMENDED RESP
& OBJ'S TO PLTFS' SECOND SET OF ROGS
3:23-CV-03417-VC

1   - ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" distinction

2   (ECF No. 90, the "Protective Order").

3   **3.**   Meta reserves all objections or other questions as to the competency, relevance,

4   materiality, privilege or admissibility as evidence in any subsequent proceeding in or trial of this

5   or any other action for any purpose whatsoever of Meta's responses herein and any document or

6   thing identified or provided in response to the Interrogatories.

7   **II.   OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

8   Whether or not separately set forth in response to each Interrogatory, Meta makes these

9   objections to the following Instructions and Definitions:

10   **1.**   Meta objects to all defined terms to the extent that they are not utilized in Plaintiffs

11   Second Set of Interrogatories.

12   **2.**   Meta objects to the definition of "Agreements" as overbroad and unduly

13   burdensome to the extent that it encompasses oral contracts, arrangements, or understandings,

14   including those that are informal. Meta further objects to the definition of "Agreements" as vague,

15   ambiguous, and unintelligible as to the term "modifications" to the extent it is intended to mean

16   something distinct from "versions" or "amendments." Meta will construe "Agreements" to mean

17   written contracts, including drafts, versions, amendments, exhibits, and appendices thereof.

18   **3.**   Meta objects to the definition of "Communications" to the extent it is inconsistent

19   with and otherwise seeks to circumvent the custodian and search term limits for electronic

20   communications (including emails and other electronic correspondence, and documents attached

21   thereto), as provided in the Stipulated Protocol regarding Electronic Discovery ("ESI

22   Order"). Meta will produce Documents, including Communications, pursuant to the terms of the

23   ESI Order, and any agreement to produce such Documents is explicitly in view of the terms of the

24   ESI Order. To the extent that Meta responds to a Request, including by agreeing to search for

25   relevant, non-privileged communications in Meta's possession, custody, or control, such response

26   is not a representation that any particular custodian or search term is appropriate. Meta expressly

27   reserves the right to object to any custodians and search terms proposed by Plaintiffs.

28

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META'S FURTHER SUPP. & AMENDED RESP
& OBJ'S TO PLTFS' SECOND SET OF ROGS
3:23-CV-03417-VC

4. Meta objects to the definition of "Complaint" which refers to an outdated complaint that has since been replaced by the Corrected Second Consolidated Amended Complaint (ECF No. 133). Meta will construe "Complaint" to refer to the Corrected Second Consolidated Amended Complaint.

5. Meta objects to the definitions of "Llama 1," "Llama 2," and "Llama 3" as vague and ambiguous as to the undefined terms "precursor models" and "variant models." Meta further objects to these definitions as overbroad, unduly burdensome, and disproportionate to the needs of the case to the extent that it purports to require Meta to produce documents or information concerning large language models ("LLMs") that were not publicly released and/or were not trained on corpuses of text that include any of Plaintiffs' allegedly copyrighted works. For the same reason, Meta objects to these definitions to the extent that they purport to require Meta to produce documents or information concerning LLMs that are not relevant to any party's claims or defenses. For purposes of these responses, Meta construes the term "Llama 1" to refer to the LLM released by Meta as Llama on February 24, 2023, the term "Llama 2" to refer to the LLM released by Meta under that name on July 18, 2023, and the term "Llama 3" to refer to the LLM released by Meta under that name on April 18, 2024, July 23, 2024, and September 25, 2024.

6. Meta objects to the definition of "Meta" as overbroad, unduly burdensome, and disproportionate to the needs of the case to the extent that it purports to require Meta to produce documents or information concerning any "owners" regardless of shareholder interest and shareholders with an ownership of in Meta of greater than 5%. Meta will construe "Meta" or "You" to mean Meta Platforms, Inc.

7. Meta objects to the definition of "Meta Language Models" as vague and ambiguous as to the undefined terms "precursor models" and "variant models." Meta further objects to this definition as overbroad, unduly burdensome, and disproportionate to the needs of the case to the extent that it purports to require Meta to produce documents concerning LLMs that were not publicly released and/or were not trained on corpuses of text that allegedly include any of Plaintiffs' allegedly copyrighted works. For the same reason, Meta objects to this definition to the extent that it purports to require Meta to produce documents that are not relevant to any party's claims or

1   defenses. Meta will construe "Meta Language Models" to mean the models within the Llama

2   family of LLMs that have been publicly released by Meta, namely, Llama 1, Llama 2, Code Llama,

3   and Llama 3 (as those terms are construed above).

4   **8.**   Meta objects to the definition of "Relevant Period" as vague, ambiguous, and

5   unintelligible, as it is defined circularly to mean "all times relevant to… the Complaint." Meta will

6   construe the Relevant Period to mean January 1, 2022 to the present.

7   **9.**   Meta objects to the definition of "Training Data" as vague, ambiguous, and

8   unintelligible as to the term "other material," which is indefinite and undefined. Meta further

9   objects to the definition of "Training Data" as vague and ambiguous as to the phrase "considered

10   for use," which, read literally, would encompass any dataset considered by any Meta employee,

11   regardless of the seriousness of such consideration and whether or not that consideration was ever

12   acted upon. Meta further objects to this definition to the extent it purports to include datasets (or

13   "considered" datasets) that include content to which Plaintiffs have made no claim of ownership

14   and which are not the subject of any allegations of copyright infringement by Plaintiffs. Meta will

15   construe "Training Data" to mean the "Books3" textual dataset used to train the Meta Language

16   Models (as construed above).

17   **10.**   Meta objects to the definition of "You" and "Your" as overbroad, unduly

18   burdensome, and nonsensical, insofar as it refers to "the specific Defendant(s) producing

19   documents in response to these Requests." There is only one defendant in this case, Meta, and this

20   response is to the Interrogatories, not any document requests. Meta further objects to this definition

21   to the extent it seeks to impose upon Meta an obligation to investigate information or documents

22   outside of its possession, custody, or control. For purposes of these responses, Meta construes the

23   terms "You" and "Your" coextensively with Meta (as construed above).

24   **11.**   Meta objects to Instruction 1 to the extent that it purports to require more of Meta

25   than any obligation imposed by law, and would subject Meta to unreasonable and undue burden

26   and expense. Meta will supplement or amend its responses to these Interrogatories in accordance

27   with Meta's obligations under Rule 26(e).

28

1   **12.**   Meta objects to Instruction 2, which defines the "Relevant Period" as January 1,

2   2000 to the present. Such definition is overbroad, unduly burdensome, and disproportionate to the

3   needs of the case because it both precedes the existence of Facebook (and therefore Meta) by

4   several years, and the development of the Meta Language Models by decades. For the same reason,

5   the definition of "Relevant Period," as applied to the Interrogatories, would encompass information

6   that is irrelevant to the parties' claims and defenses. The Instruction is also inconsistent with the

7   definition of "Relevant Period" provided on page 3 of the Interrogatories and is therefore vague

8   and ambiguous. Meta will construe the Relevant Period to mean January 1, 2022 to the present.

9   **13.**   Meta objects to Instruction 4 (referring to Fed. R. Civ. P. Rule 33(d)) on the ground

10   that it purports to require more of Meta than any obligation imposed by law, and would subject

11   Meta to unreasonable and undue burden and expense.

12   **14.**   Meta objects to Instruction 6 (outlining additional obligations for allegedly

13   incomplete responses) to the extent that it purports to require Meta to investigate information

14   outside of its possession, custody, or control.

15   **15.**   Meta objects to Instruction 8 (outlining additional obligations for any privilege

16   objection) on the ground that it purports to require more of Meta than any obligation imposed by

17   law, and would subject Meta to unreasonable and undue burden and expense.

18   **16.**   Meta objects to Instruction 9 (outlining additional obligations for any work product

19   objection) on the ground that it purports to require more of Meta than any obligation imposed by

20   law, and would itself require disclosure of information protected by attorney-client privilege and/or

21   attorney work product doctrine.

22   **17.**   Meta objects to Instruction 10 (building in a separate question for each

23   Interrogatory) on the ground that it purports to require more of Meta than any obligation imposed

24   by law, seeks disclosure of information protected by attorney-client privilege and/or attorney work

25   product doctrine, and seeks to circumvent Plaintiffs' interrogatory limit.

26   **18.**   Meta objects to Instruction 11 (purporting to require responses for "all predecessors,

27   successors, subsidiaries … divisions and/or affiliates of Meta"), on the ground that it purports to

28   require more of Meta than any obligation imposed by law, and would subject Meta to unreasonable

1   and undue burden and expense. Meta further objects to Instruction 11 to the extent that it purports

2   to require Meta to investigate information outside of its possession, custody, or control. As such

3   the Instruction if overly broad, as well. Subject to any objections applicable to a particular

4   Interrogatory, Meta will conduct a reasonable, proportionate search for non-privileged, relevant,

5   responsive information within its possession, custody, or control.

6   **19.**   In responding to all Interrogatories, Meta will comply with the requirements of the

7   Federal Rules of Evidence and Federal Rule of Civil Procedure 26.

8   **III.   OBJECTIONS AND RESPONSES TO INDIVIDUAL INTERROGATORIES**

9   **INTERROGATORY NO. 16:**

10   State all facts on which you base Your contention that Your conduct constitutes fair use (17

11   U.S.C. § 107).

12   **FIRST AMENDED AND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 16:**

13   Meta incorporates by reference its objections and definitions above.

14   Meta objects to this Interrogatory as vague and ambiguous as to the phrase "Your conduct,"

15   which is undefined and could refer to any conduct. Meta will construe this Interrogatory to seek

16   information concerning Meta's claim of fair use in connection with the conduct alleged in the

17   Complaint (as construed above).

18   Meta objects to this Interrogatory as overbroad, unduly burdensome, and disproportionate

19   to the needs of the case to the extent it seeks information that Meta does not intend to rely on to

20   support a claim of fair use and calls for a lengthy narrative with regard to twelve different plaintiffs

21   and more than forty works.

22   Meta objects to this Interrogatory to the extent it prematurely calls for expert testimony or

23   identification of facts yet to be disclosed by Plaintiffs, and to the extent that it requires Meta to

24   respond to legal arguments or theories not yet disclosed by Plaintiffs.

25   Finally, Meta objects to this Interrogatory because it exceeds Plaintiffs' limit of 25

26   Interrogatories under Rule 33(a)(1).

27   Subject to and without waiving the foregoing objections, and pursuant to the terms of the

28   Protective Order, Meta responds as follows:

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META'S FURTHER SUPP. & AMENDED RESP
& OBJ'S TO PLTFS' SECOND SET OF ROGS
3:23-CV-03417-VC

1   The alleged use of Plaintiffs' asserted works, to the extent it is shown to have occurred, is

2   highly transformative in nature, because it adds something new, with a further purpose or different

3   character, altering those works with considerable new expression, meaning, or message. To the

4   extent Plaintiffs' works were used to train the Meta Language Models, the purpose was

5   transformative both in terms of <u>purpose</u> and <u>expression</u>. With respect to <u>purpose</u>, Plaintiffs' works

6   were allegedly used as data to train the models. In other words, the works were allegedly a part of

7   a corpus of text (specifically, terabytes of text from a variety of sources), from which the models

8   built complex statistical representations of language derived from the patterns, structures, and

9   relationships between words within the corpus. This enables the models to predict the next word

10   in a sequence, and thereby provide useful responses to any manner of input prompts. Such use of

11   textual material serves a fundamentally different purpose from the original texts on which the Meta

12   Language   Models   were   trained.   *See   e.g.*,   Meta_Kadrey_00000001-00000077,

13   Meta_Kadrey_00000078-00000104,   Meta_Kadrey_00000224-00000248,

14   Meta_Kadrey_00093669- Meta_Kadrey_00093760.

15   The text corpus used to train the Meta Language Models includes a large amount of textual

16   materials, and to the extent Plaintiffs' works were used to train those models, they would constitute

17   a tiny fraction of the textual training dataset (both individually and collectively). The purpose of

18   the models, and the use of text datasets, is to create new, original textual output, not to reproduce

19   the content of the datasets with which it was trained. This is demonstrated by, among other things,

20   Meta's efforts to minimize the models' ability to memorize and/or output training data verbatim

21   (*see e.g.*, Meta_Kadrey_00000277) and the wide variety of uses that have been made of the models.

22   *See e.g.*, Meta_Kadrey_00092978-00093308, Meta_Kadrey_00062157. Indeed, all Plaintiffs have

23   admitted that they are not aware of any output from any Meta Language Model that replicates any

24   protected expression in their at-issue books. *See e.g.*, T. Coates 7/22/2024 Resps. & Objs. to Meta's

25   2nd Set of RFAs, Resp. to RFA No. 24 (admitting, subject to objections, that Plaintiff is "personally

26   unaware of any text generated by any of Meta's Llama models that infringes [Plaintiff's]

27   ASSERTED WORKS."); J. Díaz 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to

28   RFA No. 24 (same); C. Golden 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to

**META'S FURTHER SUPP. & AMENDED RESP
& OBJ'S TO PLTFS' SECOND SET OF ROGS
3:23-CV-03417-VC**

1   RFA No. 24 (same); A. Greer 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA

2   No. 24 (same); D. Hwang 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA No.

3   24 (same); R. Kadrey 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA No. 24

4   (same); M. Klam 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA No. 24

5   (same); L. Lippman 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA No. 24

6   (same); S. Silverman 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA No. 24

7   (same); R. Snyder 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA No. 24

8   (same); J. Woodson 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA No. 24

9   (same); C. Golden 9/17/2024 Dep. 260:6–261:13 (Mr. Golden testifying that the present lawsuit is

10   not about what comes out of Meta's large language models); A. Greer 9/24/2024 79:21–80:3 (Mr.

11   Greer testifying that his claims concern the use of his works to train large language models); D.

12   Hwang 9/16/2024 Dep. 252:23–253:6 (Mr. Hwang testifying that the operative complaint does not

13   allege that the Meta Language models create any output that is similar to any of his books or plays);

14   L. TerKeurst 9/23/2024 Dep. 226:20–25, 229:5–12 (Ms. TerKeurst testifying that she was not

15   aware of any text generated by the Meta Language Models that was substantially similar that of her

16   asserted works); J. Woodson Dep. 328:23–329:4 (Ms. Woodson testifying that she is not aware of

17   any output from any Meta LLM in which any of her characters appeared.); S. Silverman 10/10/2024

18   Dep. 42:5–8 (Q: "[D]oes it matter if Meta's models never output any language from your book?" A:

19   "It doesn't matter at all."); *id.* 156:25–157:2 ("It doesn't matter what he does with it or what output

20   comes from it. It's not right."); *id.* 321:9–11 ("It's not about the output. If the output might not be

21   this book, but without this book it wouldn't have the out-book [SIC] . . . ."); T. Coates 11/21/2024

22   Dep. 52:22–53:11 (Mr. Coates testifying that he has not personally created or witnessed someone

23   create output from Meta's AI model that replicates or regurgitates portions of his books); M. Klam

24   Rough Drft. Dep. 38:11–16, 234:5–11 (Mr. Klam testifying that he is unaware of any instance in

25   which any Meta AI tool has output verbatim text from any of his books and cannot identify any

26   language he has written in any of his books that was reproduced in the output of Meta's AI model);

27   R. Snyder Rough Drft. Dep. 36:2–4 (Ms. Snyder testifying that she has never seen any output

28   generated by a Meta AI model that copies any language of hers); *cf.* D. Hwang 9/16/2024 Dep.

1   363:6–15 (Mr. Hwang testifying that he did not believe when he filed suit that the Meta Language

2   Models could create works that were substantially similar to his works); L. Lippman 9/17/2024

3   Dep. 311:16–312:1 (Ms. Lippman testifying that she is aware that the current version of the

4   Complaint does not allege that Meta's generative AI tools create any output that is substantially

5   similar to her books); A. Greer 9/24/2024 Dep. 28:17–20 (same); J. Díaz 11/20/2024 Dep. 216:4–

6   13 (same)

7   The transformative nature also extends to <u>expression</u>. The pre-training process involves a

8   number of steps that fundamentally transform the input dataset text in order to facilitate training of

9   the large language model ("LLM"), which Meta will further describe in further detail in connection

10   with expert discovery. At a high-level, the pre-training process includes a "tokenization" step in

11   which the data in training datasets is broken down and encoded into a series of values known as

12   "tokens" which are used to create numerical vector representations that the LLM training

13   algorithms can understand. (*See e.g.*, Meta_Kadrey_00000078-00000104, Section 2.1

14   ("Tokenizer"); Meta_Kadrey_00000001-00000077, at 6 ("Tokenizer").) The input data is then

15   used in a complex series of LLM training algorithms that adjust the large number of numerical

16   values (known as parameters which include weights) in the LLM, that define the connections and

17   relationships between the nodes in the LLM. By adjusting these weights, the LLM can "learn" and

18   better predict correct outputs based on input data. These numerical parameters enable the LLM,

19   after the training process, to generate better output data in response to input prompts. The process

20   of training of an LLM represents a complete transformation into a form that is entirely

21   unrecognizable from the original training data.

22   The transformativeness of Meta's use also extends to the post-training and fine-tuning

23   processes used with the Meta Language Models. Plaintiffs have not alleged that their works were

24   used as data in any post-training and fine-tuning processes for any Meta Language Model, but

25   nevertheless, post-training and fine-tuning processes similarly involve a highly transformative use

26   of the data used in those processes, both in terms of purpose and expression. The data used in post-

27   training and fine-tuning is used to fine tune model parameters to improve the performance, quality,

28   and behavior of the models and their responses. For example, in the post-training stage, "the model

1   is tuned to follow instructions, align with human preferences, and improve specific capabilities (for

2   example, coding and reasoning)." The Llama 3 Herd of Models, p.1. In the post-training and fine-

3   tuning processes (which will be discussed in more detail in expert discovery), post-training data is

4   likewise used in a series of complex LLM training algorithms that further tailor the model

5   parameters to improve the quality of responses and the ability of the model to perform various

6   tasks. Post-training and fine-tuning processes also generally involve an amount of data that

7   constitutes a fraction of the amount of data used in pre-training the model. Additionally, and for

8   the same reasons, the transformativeness of Meta's use also extends to research and evaluations

9   (including ablation experiments) to assess the behavior and performance of the Meta Language

10   Models. Plaintiffs likewise have not alleged that their works were used as data for research or

11   evaluation of Meta Language Model, but nevertheless, the data used in these processes serves the

12   transformative purpose of studying and improving model behavior, and furthering the research and

13   development of the Meta Language Models.

14   As a further indication of the transformative nature, and the fact that the training process

15   does not simply make a copy of the input dataset, the training process is so computationally

16   complex that it requires an enormous amount of computing power. *See e.g.*,

17   Meta_Kadrey_00000001-00000077, at 4 ("When training a 65B-parameter model, our code

18   processes around 380 tokens/sec/GPU on 2048 A100 GPU with 80GB of RAM. This means that

19   training over our dataset containing 1.4T tokens takes approximately 21 days.").

20   Aside from its highly transformative nature, Meta's alleged use also has substantial non-

21   commercial, nonprofit, and educational (including research) purposes. Meta is investing billions

22   of dollars in research and development of state-of-the-art LLM technology that it is then making

23   available to the public. In particular, the training of the Meta Language Models resulted in Meta's

24   release of Llama 1, Llama 2, CodeLlama, and Llama 3, 3.1, and 3.2 to the open source

25   community. These LLMs were provided openly to the public, pursuant to an open license that

26   permits developers, researchers, and institutions (with the exception of licensees with more than

27   700 million monthly active users) to use and modify the Llama models free of charge. *See e.g.*,

28   Meta_Kadrey_00000160-00000162,   Meta_Kadrey_00093275-00093284,

1   Meta_Kadrey_00093658-00093760. The open release of Llama has resulted in the Llama models

2   being downloaded hundreds of millions of times by researchers and developers from around the

3   world and has catalyzed development of new and improved AI tools and technologies. *See e.g.*,

4   Meta_Kadrey_00092978-00093308, Meta_Kadrey_00062157. The open and public release of

5   Llama has allowed the public to access highly capable LLM technologies that would otherwise be

6   available only to large organizations and/or at considerable expense. More broadly, Meta's

7   investment and open release is contributing to the U.S. economy, the emergence of a new and

8   important industry, and the U.S.'s global leadership of that industry over geopolitical

9   competitors. In that regard, Meta has agreed to permit members of the Five Eyes intelligence

10   alliance, namely, the United States, Canada, UK, Australia, and New Zealand, to use the Meta

11   Language Models. *See* e.g., Meta_Kadrey_00213585.

12   Plaintiffs' allegedly infringed works were published prior to Meta's alleged use of those

13   works. And Meta's use of large volumes of texts was necessary to extract data regarding, e.g.,

14   word frequencies, grammar, and syntax from those works to generate new content. This

15   information constitutes either facts and ideas, which are not protectable by copyright, or is

16   otherwise unrelated to the purpose of copyright protection. Furthermore, given that training the

17   Meta Language Models requires terabytes of text, that greater volumes of text tends to improve

18   model performance on objective benchmarks measuring reasoning and knowledge of facts, and the

19   formats in which the text is available, it was reasonable for Meta to utilize copies of entire works

20   (as opposed to portions thereof), in particular given Meta's efforts to develop the models in a

21   manner that minimizes the likelihood that training data can be reproduced as model output. For

22   example, books data comprised only approximately 4.5% of tokens used to train Llama 1 and only

23   4.4% of tokens used to train Llama 2.

24   The ordinary market for Plaintiffs' works is the market for people to purchase and read the

25   books and, possibly, to create derivative works from those books, such as for audio books and film

26   and television adaptations. The Meta Language Models and their outputs do not serve as a market

27   substitute for the Plaintiffs' asserted works, do not compete with those works, and do not harm the

28   value of Plaintiffs' asserted works. Plaintiffs have produced no evidence to the contrary, such as

1 evidence of lost sales or other financial harm. To the contrary, plaintiffs have admitted that they

2 are not aware of any such harm. *See e.g.*, T. Coates 9/6/2024 Resps. & Objs. to Meta's 2nd Set of

3 RFAs, Resp. to RFA No. 15 (admitting, subject to objections, that Plaintiff is unaware of lost sales

4 due to alleged infringement); J. Díaz 9/6/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to

5 RFA No. 15 (same); C. Golden 8/28/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to

6 RFA No. 15 (same); A. Greer 9/6/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA

7 No. 15 (same); D. Hwang 9/6/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA No.

8 15 (same); R. Kadrey 8/28/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA No. 15

9 (same); M. Klam 9/6/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA No. 15 (same);

10 L. Lippman 9/6/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA No. 15 (same); S.

11 Silverman 8/28/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA No. 15 (same); R.

12 Snyder 9/6/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA No. 15 (same); J.

13 Woodson 9/6/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA No. 15 (same); L.

14 TerKeurst 9/12/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA No. 15 (similar);

15 A. Greer 9/6/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA No. 16 (admitting,

16 subject to objections, that Plaintiff's book sales have not decreased due to the alleged use of

17 Plaintiff's Asserted Works to train large language models); L. TerKeurst 9/6/2024 Resps. & Objs.

18 to Meta's 2nd Set of RFAs, Resp. to RFA No. 16 (similar); T. Coates 9/19/2024 Resps. & Objs. to

19 Meta's 2nd Set of RFAs, Resp. to RFA No. 18 (admitting, subject to objections, that Plaintiff is

20 unaware of lost licensing opportunities due to alleged infringement); J. Díaz 9/19/2024 Resps. &

21 Objs. to Meta's 2nd Set of RFAs, Resp. to RFA No. 18 (same); C. Golden 9/19/2024 Resps. &

22 Objs. to Meta's 2nd Set of RFAs, Resp. to RFA No. 18 (same); A. Greer 9/19/2024 Resps. & Objs.

23 to Meta's 2nd Set of RFAs, Resp. to RFA No. 18 (same); D. Hwang 9/19/2024 Resps. & Objs. to

24 Meta's 2nd Set of RFAs, Resp. to RFA No. 18 (same); R. Kadrey 9/19/2024 Resps. & Objs. to

25 Meta's 2nd Set of RFAs, Resp. to RFA No. 18 (same); M. Klam 9/19/2024 Resps. & Objs. to

26 Meta's 2nd Set of RFAs, Resp. to RFA No. 18 (same); L. Lippman 9/19/2024 Resps. & Objs. to

27 Meta's 2nd Set of RFAs, Resp. to RFA No. 18 (same); S. Silverman 9/19/2024 Resps. & Objs. to

28 Meta's 2nd Set of RFAs, Resp. to RFA No. 18 (same); R. Snyder 9/19/2024 Resps. & Objs. to

1   Meta's 2nd Set of RFAs, Resp. to RFA No. 18 (same); J. Woodson 9/19/2024 Resps. & Objs. to

2   Meta's 2nd Set of RFAs, Resp. to RFA No. 18 (same); L. TerKeurst 9/12/2024 Resps. & Objs. to

3   Meta's 2nd Set of RFAs, Resp. to RFA No. 18 (same); T. Coates 7/22/2024 Resps. & Objs. to

4   Meta's 2nd Set of RFAs, Resp. to RFA Nos. 22 and 23 (admitting, subject to objections, that

5   Plaintiff is unaware of (1) persons reading text generated by Meta's Llama models as a substitute

6   for Plaintiff's Asserted Works as described in RFA 22, and (2) documentary evidence of persons

7   reading text generated by Meta's Llama models as substitute for Plaintiff's Asserted Works as

8   described in RFA 23); J. Diaz 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA

9   Nos. 22 and 23 (same); C. Golden 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to

10   RFA Nos. 22 and 23 (same); A. Greer 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs, Resp.

11   to RFA Nos. 22 and 23 (same); D. Hwang 7/22/2024 Resps. & Objs. to Meta's 2nd Set of RFAs,

12   Resp. to RFA Nos. 22 and 23 (same); R. Kadrey 7/22/2024 Resps. & Objs. to Meta's 2nd Set of

13   RFAs, Resp. to RFA Nos. 22 and 23 (same); M. Klam 7/22/2024 Resps. & Objs. to Meta's 2nd Set

14   of RFAs, Resp. to RFA Nos. 22 and 23 (same); L. Lippman 7/22/2024 Resps. & Objs. to Meta's

15   2nd Set of RFAs, Resp. to RFA Nos. 22 and 23 (same); S. Silverman 7/22/2024 Resps. & Objs. to

16   Meta's 2nd Set of RFAs, Resp. to RFA Nos. 22 and 23 (same); R. Snyder 7/22/2024 Resps. & Objs.

17   to Meta's 2nd Set of RFAs, Resp. to RFA Nos. 22 and 23 (same); J. Woodson 7/22/2024 Resps. &

18   Objs. to Meta's 2nd Set of RFAs, Resp. to RFA Nos. 22 and 23 (same); L. TerKeurst 8/21/2024

19   Resps. & Objs. to Meta's 2nd Set of RFAs, Resp. to RFA Nos. 22 and 23 (similar); D. Hwang

20   9/16/2024 Dep. 254:7–13 (Mr. Hwang testifying that he did not know whether he had experienced

21   any financial loss as a result of the alleged training of the Meta Language Models on his asserted

22   works); D. Hwang 9/16/2024 Dep. 290:10–17, 291:22–292:4 (Mr. Hwang testifying that he was

23   not aware of any lost sales of his asserted works due to the alleged infringement in the complaint);

24   R. Kadrey 9/25/2024 Dep. 223:23–224:1 (Mr. Kadrey testifying that he was unaware of any injury

25   other than purported harm of not receiving compensation from Meta); R. Kadrey 9/25/2024 Dep.

26   222:6–9 (Mr. Kadrey testifying that he was not aware of any lost sales of his asserted works due to

27   the alleged infringement in the complaint); L. Lippman 9/17/2024 Dep. 339:3–10 (Ms. Lippman

28   testifying that she is unaware of any financial harm that she has suffered as a result of conduct by

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13

META'S FURTHER SUPP. & AMENDED RESP
& OBJ'S TO PLTFS' SECOND SET OF ROGS
3:23-CV-03417-VC

1   Meta alleged in the Complaint); A. Greer 9/24/2024 Dep. 120:21–121:10 (Mr. Greer testifying that

2   he is unaware of any lost book sales or lost licensing opportunities as a result of Meta's alleged

3   infringement of his works, or whether it is possible that book sales have actually increased due to

4   his participation in this lawsuit); S. Silverman 10/10/2024 Dep. 204:12–205:7, 296:10–297:2 (Ms.

5   Silverman testifying that she is unaware of any evidence to suggest someone did not buy her book

6   because they could generate a summary on a Meta AI tool, evidence of lost sales or lost licensing

7   opportunities due to Meta's conduct, or any instance in which another person did not seek to license

8   her book because of Meta's actions); T. Coates 11/21/2024 Dep. 123:19–125:25 (Mr. Coates

9   testifying that he is unaware of any lost sales or lost licensing opportunities due to Meta's LLMs);

10   J. Díaz 11/20/2024 Dep. 337:22–339:6, 340:21–350:16 (Mr. Díaz testifying that he is unaware of

11   any decrease in sales of his books or any monetary harm suffered due to Meta's use of his books to

12   train its Llama models) ; R. Snyder 12/11/2024 Rough Drft. Dep. 249:22–250:1, 250:14 251:1–

13   253:5, 259:19–23 (Ms. Snyder testifying that she is unaware of any evidence of lost sales or lost

14   licensing opportunities as a result of Meta's conduct alleged in the Complaint); J. Woodson

15   9/30/2024 Dep. 383:14–20, 389:5–20 (Ms. Woodson testifying that she is unaware of any lost

16   licensing opportunities, loss of income, or lost sales as a result of Meta's conduct alleged in the

17   Complaint); M. Klam 12/10/2024 Rough Drft. Dep. 325:21–326:3, 328:6-10, 330:13–16 (Mr. Klam

18   testifying that he is unaware of any evidence that he lost sales of his asserted works or lost licensing

19   opportunities as a result of Meta's conduct alleged in the Complaint); C. Farnsworth 12/4/2024

20   Rough Drft. Dep. 138:20–139:8 (Mr. Farnsworth testifying that he could not point to any specific

21   lost opportunity he suffered due to Meta's release of its Llama model).

22   Moreover, there was no market for licensing Plaintiffs' literary books as training data for

23   LLMs at the time Meta first Llama 1 or at the time Plaintiffs' filed their lawsuit, and there is no

24   such market today. Plaintiffs have admitted as much in discovery. Moreover, testimony from

25   Meta's witnesses, including, by way of example, from Sy Choudhury, and Alex Boesenberg,

26   indicate that there has not been, and is not a market for licensing books for AI training. *See e.g.*, S.

27   Choudhury 12/5/2024 Dep. 20:6-22:21, 65:10-21; A. Boesenberg 11/18/2024 Dep. 381:14-

28   22. Moreover, any particular book has no independent value as training data and/or is

interchangeable with countless other books. In any case, such a market would be for a transformative use. It would also be impractical, if not impossible, for companies developing LLMs to attempt to negotiate licenses with each individual book rights holder for various reasons, including but not limited to the amount of time and cost necessary to do so would have precluded development of the models in the first instance, in particular given the time and costs relative to the de minimis value of individual works to the development of the models. In support, Meta intends to rely on Plaintiffs' discovery responses and testimony, expert reports and testimony, percipient witness testimony, as well as documents produced in this litigation

INTERROGATORY NO. 17:

If You or any of Your employees and/or agents intend to assert the advice of counsel defense, state any and all facts upon which You or any of your employees and/or agents intend to rely on for that contention.

SECOND AMENDED RESPONSE TO INTERROGATORY NO. 17:

Meta incorporates by reference its objections and definitions above.

Meta objects to this Interrogatory as vague and ambiguous as to the reference to "Your employees and/or agents" with respect to any defense in this case, as no Meta employees or agents are parties to this case.

Meta objects to this Interrogatory because it exceeds Plaintiffs' limit of 25 Interrogatories under Rule 33(a)(1).

Subject to and without waiving the foregoing objections, Meta responds as follows: Meta does not intend to assert the advice of counsel defense in this case.

Dated: December 13, 2024   COOLEY LLP

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16

META'S FURTHER SUPP. & AMENDED RESP
& OBJ'S TO PLTFS' SECOND SET OF ROGS
3:23-CV-03417-VC

PROOF OF SERVICE

  I am a citizen of the United States and a resident of the State of California. I am employed in Los Angeles County, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is Cooley LLP, 355 South Grand Avenue, Suite 900, Los Angeles, CA 90071. On the date set forth below I served the documents described below in the manner described below:

- **DEFENDANT META PLATFORMS, INC.'S FURTHER SUPPLEMENTAL AND AMENDED RESPONSES AND OBJECTIONS TO PLAINTIFFS' SECOND SET OF INTERROGATORIES**

☒ (BY ELECTRONIC MAIL) I am personally and readily familiar with the business practice of Cooley LLP for the preparation and processing of documents in portable document format (PDF) for e-mailing, and I caused said documents to be prepared in PDF and then served by electronic mail to the parties listed below.

on the following part(ies) in this action:

  Executed on December 13, 2024, at Los Angeles, California.

          /s/Jerry Gonzalez

          Jerry Gonzalez

COOLEY LLP
ATTORNEYS AT LAW

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PROOF OF SERVICE
3:23-CV-03417-VC

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